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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BRUCE PRESTON WILLIAMS and ERIK KLIMISCH

Appeal 2008-3827
Application 10/604,566
Technology Center 3700

Decided:[1] March 3, 2009

Before TONI R. SCHEINER, DEMETRA J. MILLS, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF CASE

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

The following claims are representative.

21. A telescoping roof rack assembly for a vehicle having a truck bed, comprising:

a first pair of support rails;

a second pair of support rails telescopically coupled to said first pair of support rails;

at least one pair of legs extending from said first pair of support rails and attached to a roof of said vehicle; and

at least one pair of pillar members extending from said second pair of support rails and slidably attached to a pair of sidewalls defining said truck bed of said vehicle;

said at least one pair of pillar members substantially longer than said at least one pair of legs;

said telescoping roof rack assembly moveable between a retracted position and an extended position;

said telescoping roof rack assembly in said retracted position with said at least one pair of pillar members adjacent to said at least one pair of legs.

22. The telescoping roof rack assembly recited in claim 21 wherein said telescoping roof rack assembly in said retracted position comprises said second pair of support rails retracted substantially within said first pair of support rails.

24. The telescoping roof rack assembly recited in claim 21 wherein said first pair of support rails and said second pair of support rails have an intermediate pair of support rails slidably attached therebetween.

25. A vehicle comprising:
a passenger cab;
a roof extending over said passenger cab;
a truck bed with a pair of sidewalls extending rearward from said passenger cab; and
said telescoping roof rack assembly recited in claim 21;
said at least one pair of legs attached to said roof;
said at least one pair of pillar members slidably attached to said pair of sidewalls.

26. The vehicle recited in claim 25 wherein said roof has
a front end portion and a back end portion with two of said pairs of legs extending therefrom.

27. The vehicle recited in claim 25 wherein said first pair
of support rails extends substantially along the length of said roof.

31. The vehicle recited in claim 25 wherein said telescoping roof rack assembly in said extended position comprises said second pair of support rails extending substantially along the length of said truck bed.

38. The vehicle recited in claim 35, wherein said first pair of support rails has at least two cross members extending therebetween.

41. A vehicle comprising:
a cab;
a truck bed with a pair of sidewalls extending from said cab;
said cab having a roof with a front portion and a rear portion; and
a telescoping roof rack assembly having a roof rack portion and a bed rack portion;
said roof rack portion attached to said roof in a fixed position extending along said front portion and said rear portion;
said bed rack portion slidably attached to said pair of sidewalls;

said bed rack portion movable between a forward position and a rearward position on said pair of sidewalls;
said bed rack portion in said forward position adjacent to said cab and extending along said roof.

Cited References

Burns	US 3,734,110	May 22, 1973
Boudah	US 5,143,415	Sep. 1, 1992
Aftanas (Aftanas)	US 6,056,176	May 2, 2000

Grounds of Rejection

1. Claims 21-27, 29-33, 35-37 and 40-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Boudah in view of Burns.

2. Claims 38 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Boudah in view of Burns and Aftanas.

ISSUE

The Examiner contends that

> "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make a roof rack assembly and at least one pair of legs extending from first pair of support rails attached to the roof of the vehicle, as taught by Burns, with the telescoping roof rack assembly for a vehicle having a truck bed of Boudah in order to enhance multi-functional capabilities."

(Ans. 4.)

Appellants argue that neither the Boudah patent nor the Burns patent, whether taken singly or in combination with each other, teaches or suggests the claimed legs and pillar members adjacent to each other when the rack assembly is moved to the retracted position.

The issue is whether the Boudah patent and the Burns patent, in combination with each other, teach or suggest the claimed legs and pillar members adjacent to each other when the rack assembly is moved to the retracted position.

FINDINGS OF FACT

1. Figure 2 (A and B) reproduced from the Specification appear below.

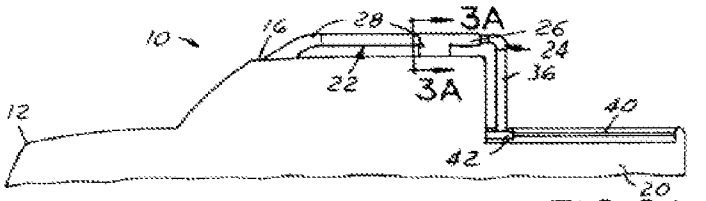

FIG. 2A

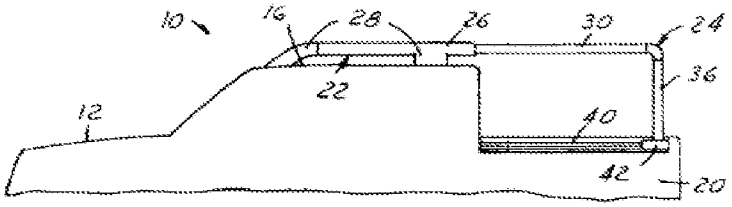

FIG. 2B

Figure 2A shows the rack assembly claimed in the retracted position and Figure 2B shows the rack assembly in the extended position.

2. Figure 1 of Boudah is reproduced below.

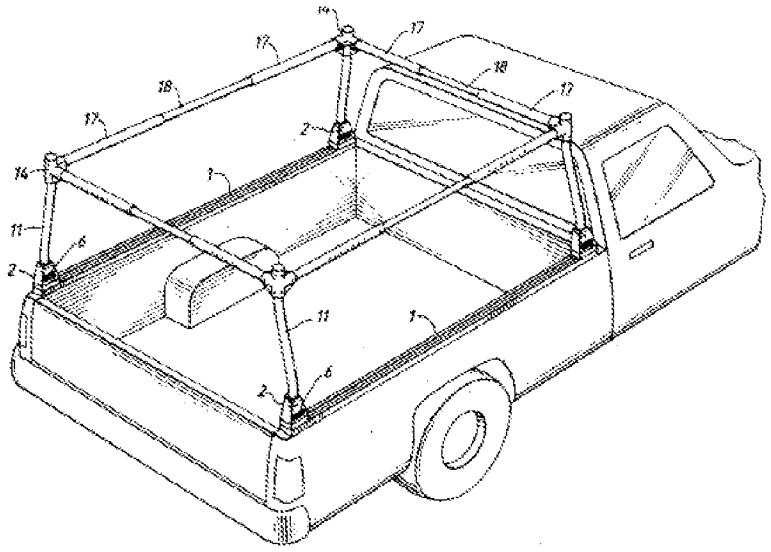

Figure 1 shows the rack assembly of Boudah with stanchion 11.

3. According to the Examiner, Boudah discloses the first pair of support rails (tubular receptor 17 and tubular insert 18); the second pair of support rails (tubular receptor 17 and tubular insert 18) telescopically coupled (14) (S*ee* Figure 5) to the first pair of support rails (tubular receptor 17 and tubular insert 18) (S*ee* Figures. 1, 2 and 5); and at least one pair of pillar members (11) extending from the second pair of support rails (tubular receptor 17 and tubular insert 18) and slidably attached (S*ee* Figures 3, 4, 7 and 9) to the pair of sidewalls (1) defining the truck bed of the vehicle (*see* column 2, lines 47 - 48) (*see* Figures 1 , 3 and 7); (2); the telescoping rack assembly moveable between the retracted position (S*ee* Figure 2 (Bottom Figure) and the extended position (S*ee* Figure 2 (Top Figure); the telescoping rack assembly in the retracted position (S*ee* Figure 2) with at least one pair of pillar members (stanchion 11) adjacent to the at least one pair of legs (2) (S*ee* Figures 1-10). (Ans. 3-4.)

4. Figure 2 of Boudah is reproduced below.

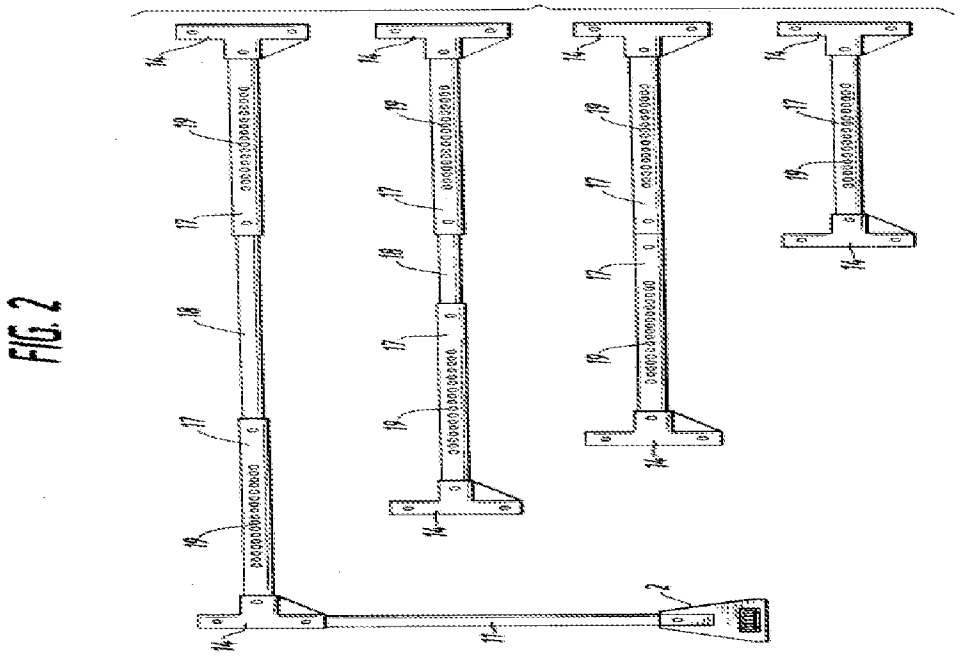

Figure 2 of Boudah shows side rails (tubular receptors 17) in extended and retracted positions. In retracted position corner pieces 14 are adjacent to one another.

5. "Boudah does not disclose the roof rack assembly and at least one pair of legs extending from first pair of support rails attached to the roof of the vehicle." (Ans. 4.)

6. "Burns teaches the roof rack assembly and at least one pair of legs (upright members 10) extending from tubular members (31, 32 and 33) and attached to the roof (11) of the vehicle (S*ee* Figure 1 [reproduced below]) for the purpose of providing multi-functional capabilities." (Ans. 4.)

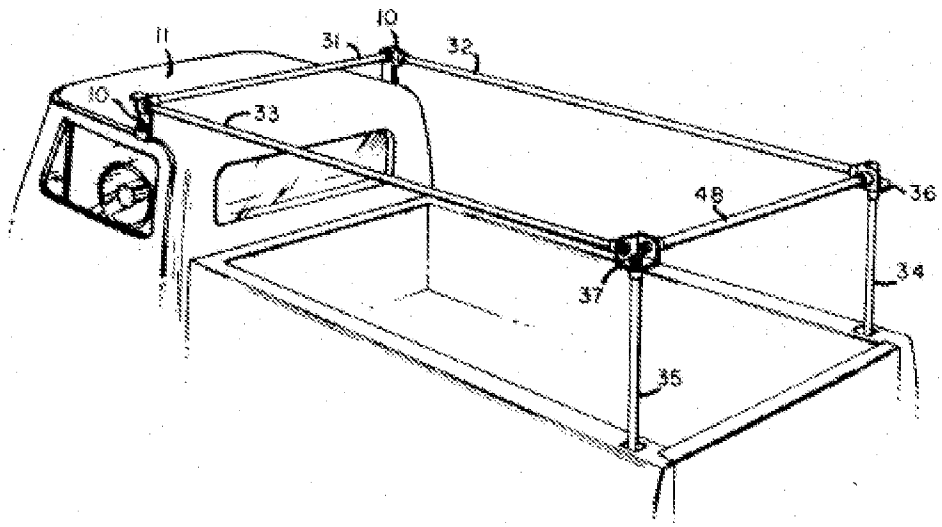

Figure 1 shows the roof rack assembly of Burns with legs (upright members 10) and pillars (tubular members 34, 35).

7. The Examiner concludes that

> "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make roof rack assembly and at least one pair of legs extending from a first pair of support rails attached to the roof of the vehicle[,] as taught by Burns[,] with the telescoping roof rack assembly for a vehicle having a truck bed of Boudah in order to enhance multi-functional capabilities."

(Ans. 4.)

8. Regarding claim 22, Boudah discloses the telescoping rack assembly (*See* Figures 1 and 2) in retracted position (*See* Fig. 2/) comprising the second pair of support rails (tubular receptor 17 and tubular insert 18) retracted substantially within the first pair of support rails (tubular receptor 17 and tubular insert 18) (See Figure 2.) (Ans. 4.)

9. "Boudah does not disclose the roof rack assembly. Burns teaches the roof rack (S*ee* Figure 1) for the purpose of providing multi-functional capabilities." (Ans. 4.)

10. The Examiner finds that

> "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make roof rack assembly as taught by Burns with the telescoping roof rack assembly for a vehicle having a truck bed of Boudah in order to enhance multi-functional capabilities."

(Ans. 5.)

11. Regarding claim 23, Boudah discloses the telescoping rack assembly in the extended position (S*ee* Fig. 2 /top figure) comprising the second pair of support rails (tubular receptor 17 and tubular insert 18) substantially extended from the first pair of support rails (tubular receptor 17 and tubular insert 18) (S*ee* Figure 2). (Ans. 5.)

12. "However, Boudah does not disclose the roof rack assembly." (Ans. 5.)

13. Burns teaches the roof rack (S*ee* Figure 1) for the purpose of providing multi-functional capabilities." (Ans. 5.)

14. The Examiner finds that

> "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make a roof rack assembly[,] as taught by Burns[,] with the telescoping roof rack assembly for a vehicle having a truck bed of Boudah in order to enhance multi-functional capabilities."

(Ans. 5.)

15. The term "adjacent" means near or close to but not necessarily touching. (http://www.thefreedictionary.com/adjacent.)

ANALYSIS

1. Claims 21-27, 29-33, 35-37 and 40-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Boudah in view of Burns. Separately argued claims are addressed individually herein.

Appellants argue that "[n]either the Boudah patent nor the Burns patent, whether taken singly or in combination with each other, teaches or suggests the claimed legs and pillar members adjacent to each other when the rack assembly is moved to the retracted position." (App. Br. 6.) Appellants argue that the "Examiner cited the Boudah patent (U.S. No. 5,143,415 - Figs. 1, 2, and 5) and relied on the front and rear stanchions 11 for disclosing the claimed legs and pillar members adjacent to each other when the telescoping roof rack assembly is moved to the retracted position." (*Id.*at 6-7)

The Examiner relied on Boudah primarily as evidence that adjustable, telescoping truck racks were known in the art.

Boudah describes a rack which mounts on the side panels of a truck which is adjustable to varying lengths of truck beds. (Boudah, col. 1, ll. 40-50.) Fig. 2 of Boudah shows a retracted position where corners 14 of the truck mounts are adjacent to one another. (FF4.) Burns evidences that it is known in the art to have one end of the truck rack mounted to the cab via upright member 10. (FF6.)

Thus, we agree with the Examiner (FF7) that the cited references in combination support a prima facie case of obviousness of a roof rack as claimed.

Appellants argue that in Boudah, "the front and rear stanchions 11 [pillars] are not adjacent to each other when the rack is moved to the retracted position and, therefore, cannot be relied on for disclosing the claimed legs and pillar members." (App. Br. 7.) However, Figure 2 of Boudah shows a retracted position of the truck bed rack where ends 14 of the truck mounts are adjacent to one another. (FF 3, 4.)

Appellants contend that "[n]either Boudah nor the Burns patent[,] discloses the claimed first support rails and second support rails telescopically coupled together and movable to a retracted position with the claimed pillar members adjacent to legs." (App. Br. 7.) Boudah discloses a retractable rack wherein rails (17 and 18) may be retracted and telescoped adjacent to one another. (FF 3, 4.) Burns evidences that it is known in the art to have one end of the truck rack mount to the cab via legs 10. (FF6.) Thus, we agree with the Examiner (FF7) that the cited references in combination disclose or suggest a roof rack as claimed.

Appellants further argue that "[i]n the Boudah patent, the tubes 17 [tubular receptor] (Figure 2) therein were relied on for disclosing the claimed first pair of support rails telescopically coupled to the second pair of support rails." (Ans. 3, App. Br. 7.) However, Appellants contend that "Figure 2 of Boudah (bottom illustration) shows only one tube 17 [tubular receptor] when the rack is in its retracted position." Appellants argue "that one tube 17 [tubular receptor] cannot be relied on for disclosing both a first support rail and a second support rail telescopically coupled to the first rail." (App. Br. 7.)

We are not persuaded by Appellants' argument. Figure 1 of Boudah depicts two slidable rails, one on either side of the truck. Figure 2 of Boudah exemplifies how individual rails expand and retract, and that they include tubular receptor 17 and tubular insert 18. (FF 4.) When the disclosure of Boudah and both Figures 1 and 2 are read in combination, one of ordinary skill in the art would understand that both rails expand and retract. Boudah discloses that tubular insert (18) is used when two tubular receptors (17) are used. Figure 2 of Boudah, embodiment 3 evidences use of tubular insert (18) and two tubular receptors (17). Tubular receptors (17) are nearer or closer to one another than in embodiments 1 and 2 of Figure 2 and thus are adjacent to one another. Thus, Boudah describes adjustment and retraction of tubular members using the principle of telescoping. One of ordinary skill in the art would understand from reading Boudah that any size telescoping tubular receptor and tubular insert may be used in a rack assembly. Thus we are not convinced by Appellants' argument.

Appellants contend that "stanchions 11 [pillars] on opposing ends of tube 17 [tubular receptor] are not adjacent to each other and cannot be relied on for disclosing the claimed pillar members and legs." (App. Br. 7.) The term "adjacent" means near or close to but not necessarily touching. (FF15.) Figure 2 of Boudah shows a retracted rail of a roof rack wherein the corner pieces 14 for attachment to stanchions 11 (pillars) are adjacent or close to each other but not necessarily touching. (FF 4.) Thus, we find that the combined disclosures of Boudah and Burns meet the limitations claimed.

Appellants further argue that, "[i]n the Boudah patent, stanchions 11 [pillars] therein were cited for disclosing the claimed pillar members being

substantially longer than the legs. However, in the Boudah patent, the stanchions 11 [pillars] are all substantially equal in length." (App. Br. 7.)

Burns teaches legs (upright members 10) on a cab for holding a roof rack which are substantially shorter than stanchions 35. (FF 6.) Appellants attack individual deficiencies within Boudah, and do not address what the cited references teach in combination. However, nonobviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. *In re Merck and Co. Inc.,* 800 F.2d 1091, 1097 (Fed. Cir. 1986). The test of obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention." *In re Gorman*, 933 F.2d 982, 986 (Fed. Cir. 1991). For the reasons discussed in detail above, we conclude that the combined teachings of the cited references would have suggested a roof rack as claimed.

Claims 22 and 47

We select claim 22 as representative of this claim grouping.

Claim 22 recites the telescoping roof rack assembly recited in claim 21 wherein said telescoping roof rack assembly in said retracted position comprises said second pair of support rails retracted substantially within said first pair of support rails.

Appellants contend that

> "[n]either the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination, teaches or suggests the claimed second pair of support rails retracted substantially within the first pair of support rails, with the pillar members extended from the second support rails and slidably attached to sidewalls defining a

> truck bed. In particular, in the Boudah patent, the stanchions 11 [pillars] therein do not extend from inserts 18 that are retracted within tubes 17 but, rather, from the tubes 17 themselves."

(App. Br. 8.)

We are not persuaded by Appellants' argument. Figure 1 of Boudah depicts two slidable rails, one on either side of the truck. The support rails [tubular insert 18] of Boudah are retracted within support rails [tubular receptor 17]. (FF 2, Boudah Figure 1.) For the reasons discussed above, the rejection is affirmed.

Claims 26, 33, and 42

We select claim 26 as representative of this claim grouping. Claim 26 recites the vehicle recited in claim 25 wherein said roof has a front end portion and a back end portion with two of said pairs of legs extending therefrom.

Appellants argue that

> "[n]either the Boudah patent nor the Burns patent, whether taken singly or in combination, discloses the claimed pair of legs extending from the front-end portion of the roof. In the Burns patent, the upright members 11 [10] therein extend from a rear portion of the roof rather than a front end portion of the roof."

(App. Br. 8.)

Figure 3 of Burns shows the gutter gripping member which holds the legs and Figures 1 and 2 of Burns show the gutter gripping member gripping at various locations along the gutter. It would have been apparent to one of ordinary skill in the art that the gutter gripping member with attached legs

could grip anywhere along the gutter, including at the front end of the truck cab or roof, where gutter is also located.

Appellants essentially attack individual deficiencies within each of the cited references. However, nonobviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. *In re Merck and Co.,* 800 F.2d at 1097. The test of obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention." *In re Gorman*, 933 F.2d at 986. For the reasons discussed in detail above, we conclude that the combined teachings of the cited references would have suggested a roof rack having a pair of legs extending from the front-end portion of the roof, as claimed.

The rejection of claim 26 is affirmed. Claims 33 and 42 fall with claim 26.

Claim 27

Appellants argue that

> "[n]one of the cited art, whether taken individually or in any permissible combination, discloses the claimed first pair of support rails extending substantially along the length of the roof and telescopically coupled to the second pair of support rails. For instance, in the Boudah patent, the rack therein extends along the length of the truck bed rather than the roof."

(App. Br. 8.)

Burns teaches legs on a cab for holding a roof rack which are substantially shorter than stanchions 35. Figure 3 of Burns shows the gutter gripping member which holds the legs and Figures 1 and 2 of Burns show

the gutter gripping member gripping at various locations along the gutter. It would have been apparent to one of ordinary skill in the art that the gutter gripping member with attached leg [upright member 10] could grip anywhere along the gutter, including at the front end of the truck cab or roof, where the gutter is also located. It would be understood that when the leg, gutter gripping member [upright member 10] is located at the front of the cab that the support rails will extend substantially along the length of the roof. For these reasons, the rejection of claim 27 is affirmed.

Claims 29 and 30

We select claim 29 as representative of this claim grouping. Appellants argue that

> "[n]either the Boudah patent nor the Burns patent, whether taken singly or in combination, discloses the claimed rack assembly in the retracted position with the second pair of support rails extending substantially along the length of the roof. Likewise, none of the cited art discloses the claimed rack assembly in the retracted position with the second pair of support rails disposed above the roof."

(App. Br. 8 and 9.)

As addressed above, we find that in Boudah, tubular insert 18 may be retracted in tubular receptor 17. (FF 4.) Figure 3 of Burns shows the gutter gripping member on the cab which holds the legs, and Figures 1 and 2 of Burns show the gutter gripping member gripping at various locations along the gutter. It would have been apparent to one of ordinary skill in the art that the gutter gripping member with attached leg could grip anywhere along the gutter, including at the front end of the truck cab or roof, where gutter is also

located, and thus the second rail would be substantially above the roof. It would be understood that when the gutter gripping member is located at the front of the cab that the support rails will extend substantially along the length of the roof in the retracted position. For these reasons, the rejection of claim 29 is affirmed. Claim 30 falls with claim 29.

Claim 31

Appellants argue that "[n]either the Boudah nor the Burns patent, whether taken individually or in any permissible combination, discloses the rack assembly in the extended position with the second pair of support rails extending substantially along the length of the truck bed. In the Boudah patent (Figures 1 and 2), the structure in its extended position includes three pairs of tubes 17, 18 that collectively extend along the length of the truck bed. Each pair of tubular receptors and tubular inserts (17, 18) extends along no more than about one-third of the length of the truck bed. For these reasons, the tubular receptors and tubular inserts (17, 18) are substantially different than the claimed single pair of second support rails and cannot be relied on for disclosing the same." (App. Br. 9.)

Claim 31 reads "second pair of rails" not "single pair of rails" as alleged by Appellants. The Examiner reasons that the second pair of support rails includes both rail portions (tubular receptors and tubular inserts 17 and 18) and that these rail portions extend substantially along the length of the truck bed. (Ans. 9.) Appellants have failed to rebut the Examiner's argument.

For these reasons, the rejection of claim 31 is affirmed.

Claims 35-37 and 40

Appellants submit that claims 35-37 and 40 are allowable for the same reasons set forth above for claims 21, 22, and 47. For the reasons discussed herein with respect to claim 21, we affirm the rejection of claims 35-37 and 40.

Claims 41, 43, and 44

Claim 41 is representative of this claim grouping.

Appellants contend that "[n]either the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination discloses the roof having a front portion and a rear portion with a roof rack portion attached to and extending along the front and rear portions. In the Burns patent, the rack therein is attached only to a rear portion of the roof and extends across only the same." (App. Br. 9-10.)

Figure 3 of Burns shows the gutter gripping member which holds the legs and Figures 1 and 2 of Burns show the gutter gripping member gripping at various locations along the gutter. It would have been obvious to one of ordinary skill in the art that the gutter gripping member with attached leg could grip anywhere along the gutter, including at the front end of the truck cab or roof, where gutter is also located. It would be understood that when the gutter gripping member is located at the front of the cab that the support rails will extend substantially along the length of the roof, and thus would extend along said front portion and rear portion of the cab. For these

reasons, the rejection of claim 41 is affirmed. Claims 43 and 44 fall with claim 41.

2. Claims 38-39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Boudah in view of Burns and Aftanas. Claim 38 is representative of this claim grouping.

FINDINGS OF FACT

16. Boudah discloses the first pair of support rails (length wise tubular receptors and tubular inserts 17 and 18) having the cross member (width wise tubular receptors and tubular inserts 17 and 18).

17. Boudah does not disclose the first pair of support rails having at least two cross members extending therebetween.

18. Aftanas teaches the first pair of support rails (12) having at least two cross members (20) extending therebetween (*see* Figures 1 and18) for the purpose of providing durability.

19. The Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the first pair of support rails having at least two cross members extending therebetween as taught by Aftanas, with the telescoping roof rack assembly for a vehicle having a truck bed of Boudah in order to enhance durability.

20. Regarding claim 39, Boudah discloses the cross members (tubular receptors and tubular inserts 17 and 18) is adjacent to the pillar members (11) in the retracted position (*see* Figures 1 and 2).

ANALYSIS

Claim 39 further limits claim 35, and recites that the first pair of support rails has at least two cross members extending therebetween.

Appellants argue that "[i]n the Boudah patent (Figures 1 and 2), the rack therein includes a front stanchion 11 [pillar] offset from a rear stanchion 11 [pillar] by at least one length of tube 17 [tubular receptor], even with the rack moved to its fully retracted position," and "[t]hat none of the cited art, whether taken singly or in combination teaches or suggests the claimed first pair of support rails telescopically coupled to the second pair of support rails, with pillar members extending from the second support rails and being adjacent to legs extending from the first support rails when the rack is in a retracted position." (App. Br. 10.) Appellants contend that, in the Boudah patent, (Fig. 2 (bottom illustration)), only one tube 17 [tubular receptor] extends between stanchions when the rack is in its retracted position. Appellants contend that "one tube 17 [tubular receptor] cannot be relied on for disclosing both a first support rail and a second support rail telescopically coupled to the first rail," and that "[n]one of the cited art, whether taken individually or in any permissible combination, discloses the claimed second pair of support rails retracted substantially within the first pair of support rails, with pillar members extending from second support rails and slidably attached to sidewalls defining a truck bed. For instance, in the Boudah patent, the inserts 18 therein do not have stanchions 11 [pillars] extending therefrom that are slidably attached to sidewalls of a truck bed." (App. Br. 10 - 11.)

We are not persuaded by Appellants' argument. Figure 1 of Boudah depicts two slidable rails, one on either side of the truck, with each rail including rails (tubular receptors and tubular inserts 17 and 18), and evidences stanchions 11 (pillars) adjacent to one another when in the retracted position. (FF 2, 4.) One of ordinary skill in the art would understand from viewing Figure 2 of Boudah that each rail in Figure 1 is retractable. The Examiner relies on Aftanas as teaching "the first pair of support rails (12) having at least two cross members (20) extending therebetween (see Figures 1 and 18) for the purpose of providing durability." (Ans. 16.) Thus, when the cited references are taken in combination they suggest the first pair of support rails having at least two cross members extending therebetween.

The rejection of claims 38 is affirmed. Claim 39 falls with claim 38.

CONCLUSION OF LAW AND DECISION

The obviousness rejections are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Ssc:

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